

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NORRIS SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012090702

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
MEDIATION, PREHEARING
CONFERENCE AND DUE PROCESS
HEARING

On October 9, 2012, Parent, on behalf of Student, filed a request to continue the dates in this matter on the grounds that Student requires time to obtain legal representation.¹ On October 11, 2012, Kathleen R. Lamay, attorney for the Norris School District (District), filed an opposition to Student's motion on the grounds that Student has had 20 days to obtain representation, District is entitled to resolution of the matter within 45 days of filing and Parent failed to meet-and-confer with counsel.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) The Office of Administrative Hearings (OAH) considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

¹ Student's motion is essentially a renewal of a prior request to continue which had been denied, without prejudice, because Parent had failed to meet-and-confer with counsel and had failed to serve the motion upon District.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. District contends that Student's motion should be denied on the grounds that Parent again failed to meet-and-confer with District regarding a continuance. In light of the fact that District has filed an opposition, has had the opportunity to be heard and opposes the request, a meet-and-confer would have been futile. District next contends that it is entitled to a resolution within 45 days of filing of the hearing request. The Individuals with Disabilities Education Act mandates a speedy resolution, but allows for continuances upon a showing of good cause. Student's right to reasonable time to seek representation is good cause, therefore, District's contention is unpersuasive. District asserts that Student has had 20 days to seek legal representation and that 20 days is sufficient time. This argument is equally unpersuasive.

Finally, District asserts that if a continuance is granted, its proposed dates should be adopted by OAH. District proposes that the currently set due process date of October 23, 2012, be converted into mediation, a prehearing conference be held on October 24, 2012, and the due process hearing commence on either October 30 or November 6, 2012. In essence, District proposes a continuance of 14 days. District's proposed dates do not allow for a reasonable continuance for Student to seek legal representation, and are rejected.

Student's request for a continuance is granted and this matter is set as follows:

Mediation:	November 8, 2012, at 9:30 AM
Prehearing Conference:	December 3, 2012, at 1:30 PM
Due Process Hearing:	December 11 – 13, 2012, at 9:30AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

Dated: October 12, 2012

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings